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GIE answer to ACER's public consultation on its recommendations to the Commission as regards the records of wholesale energy market transactions, including orders to trade, and as regards the implementing acts according to Article 8 of Regulation (EU) No 1227/2011

Introduction:

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Gas Infrastructure Europe (GIE) is the European association representing the interests of the infrastructure industry in the natural gas business including Transmission System Operators, Storage System Operators and LNG Terminal Operators. GIE currently has a total of 70 members in 25 European countries. On behalf of Europe's gas infrastructure operators, GIE would like to respond to the above mentioned public consultation as follows:

Question 1

Do you agree with the proposed definitions? If not, please indicate alternative proposals.

We understand that the aim of ACER is to offer clarification and guidance by introducing new definitions. However, we have serious concerns regarding the new definitions of "Transportation" and "Market participant subject to reporting obligations":

"Transportation": In the light of the 3rd Energy Package in particular and regulation of energy infrastructure in general, "transportation" is always limited in its scope only to gas transmission in high-pressure pipelines. The definition proposed by ACER widens the scope of this term to include all infrastructure facilities including underground gas storage and LNG terminals. This doesn't bring more clarification but rather changes a universally accepted understanding of what constitutes the different kinds of gas infrastructure that exist today. Thus we don't see any benefits in changing this definition. Furthermore, from a formal point of view (something we lack in ACER's document), Annex III (list of contracts to be reported) would – should this new definition be applicable – give rise to an obligation to report storage and LNG contracts which are not defined as wholesale energy products

by REMIT. It ensues from the above that storage and LNG operations must be excluded from the definition of transportation.

"Market participant subject to reporting obligations": All obligations under REMIT – including reporting obligations – are addressed to "market participants" in general. REMIT itself doesn't recognize the term "Market participant subject to reporting obligations". The use of this term therefore brings the exact opposite of additional clarity. It would seem that ACER's understanding is that this new category of market participants should include Storage System Operators and LNG Operators without them having fulfilled the precondition set by the definition of "market participant" of being active on the wholesale energy market. We strongly believe that this goes beyond the legal scope of REMIT. It is our understanding that those infrastructure operators who are active on the wholesale energy market (e.g. TSOs for the purpose of balancing or vertically integrated companies) already fall under the obligations of REMIT, including reporting obligations. We therefore propose to remove the new definition of "market participant subject to reporting obligations."

Question 2

What are your views regarding the details to be included in the records of transactions as foreseen in Annex II? Do you agree that a distinction should be made between standardised and non-standardised contracts? Do you agree with the proposal on the unique identifier for market participants?

GIE would like to highlight recital 19 of REMIT which proposes a cost-benefit analysis to ensure that reporting obligations are kept to a minimum and do not create unnecessary costs or administrative burdens for market participants. Given this, the list of information to be provided should be evaluated. Our opinion is that reporting should be limited to such data that can be automatically processed. Accordingly, the short-term reporting obligation (within 24 hours) for standardised contracts is to be seen critical as standard agreements (which fall under the definition of standardised contracts) may include non-standard clauses (e.g. EFET contracts).

Question 3

Do you agree with the proposed way forward to collect orders to trade from organised market places, i.e. energy exchanges and broker platforms? Do you think that the proposed fields in Annex II.1 will be sufficient to capture the specificities of orders, in particular as regards orders for auctions?

GIE sees reporting via organised market places only as an option. Such reporting shouldn't be mandatory as it might create further costs for such services.

Question 4

Do you agree with the proposed way forward concerning the collection of transactions in non-standardised contracts? Please indicate your view on the proposed records of transactions as foreseen in Annex II.2, in particular on the fields considered mandatory.

No comment.

Question 5

Please indicate your views on the proposed collection of scheduling/nomination information. Should there be a separate Annex II.3 for the collection of scheduling/nomination data through TSOs or third parties delegated by TSOs?

It should be noted that TSOs may not have all the information specified in this section (e.g. prices) and therefore will not be able to provide such information. The obligation of reporting data remains with the owner of the information as does the responsibility for data reported via TSOs.

Question 6

What are your views on the above-mentioned list of contracts according to Article 8(2)(a) of the Regulation (Annex III)? Which further wholesale energy products should be covered? Do you agree that the list of contracts in Annex III should be kept rather general? Do you agree that the Agency should establish and maintain an updated list of wholesale energy contracts admitted to trading on organised market places similar to ESMA's MiFID database? What are your views on the idea of developing a product taxonomy and make the reporting obligation of standardised contracts dependent from the recording in the Agency's list of specified wholesale energy contracts?

We may refer to the answer to Question 1 regarding the definition of "transportation". As this definition would include storage and LNG contract – even without being a wholesale energy product – this definition needs to be changed.

Question 7 and 8

Which of the three options listed above would you consider being the most appropriate concerning the de minimis threshold for the reporting of wholesale energy transactions? In case you consider a de minimis threshold necessary, do you consider that a threshold of 2 MW as foreseen in Option B is an appropriate threshold for small producers? Please specify your reasons.

Are there alternative options that could complement or replace the three listed above?

GIE doesn't agree with setting thresholds for producers only, in particular because they seem to be designed for the power sector rather than the gas sector. If a de minis threshold is to be adopted, it should relieve all small market participants from unnecessary administrative burden regardless of which sector they are involved in (gas and power), or their specific activities. Thus we suggest setting up a volume-based threshold for the gas sector. This threshold should be sufficient to exclude small scale CHP installations which have typically no market impact from reporting obligations. Accordingly, such volume threshold should be set in a manner that only creates reporting obligations when a given piece of information has a material impact on the market. Otherwise it would be the equivalent of spamming.

Question 9

Do you agree with the proposed approach of a mandatory reporting of transactions in standardised contracts through RRMs?

RRM may be a useful reporting tool, but GIE is of the opinion that it must be a voluntary, not mandatory option as such services may result in additional costs.

Question 10

Do you believe the Commission through the implementing acts or the Agency when registering RRMs should adopt one single standardised trade and process data format for different classes of data (pre-trade/execution/post-trade data) to facilitate reporting and to increase standardisation in the market? Should this issue be left to the Commission or to the Agency to define?

GIE does not see the need for one general standard as it might create the need to change existing systems, giving rise to additional costs. A cost-benefit analysis as foreseen in recital 19 should be carried out.

Question 11

Do you agree that market participants should be eligible to become RRMs themselves if they fulfil the relevant organisational requirements?

GIE agrees that all market participants may become a RRM, but only on a voluntary basis.

Question 12

In your view, should a distinction be made between transactions in standardised and non-standardised contracts and reporting of the latter ones be done directly to the Agency on a monthly basis?

GIE wants to highlight recital 19 of REMIT which proposes a cost benefit analyses to ensure that reporting obligations are kept to a minimum and do not create unnecessary costs or administrative burdens for market participants. Reporting should therefore be limited to data that can be automatically processed and are manageable and feasible to be reported within a reasonable time frame. Accordingly, the short-term reporting obligation (within 24 hours) for standardised contracts is to be seen critical as standard agreements (which fall under the definition of standardised contracts) may include non-standard clauses (e.g. EFET contracts).

Question 13

In view of developments in EU financial market legislation, would you agree with the proposed approach for the avoidance of double reporting?

GIE believes that the scope and detail of information to be provided under REMIT, EMIR or MIFID should be harmonised beforehand so that double reporting for one and the same transaction is avoided. The current proposal does not seem sufficient to avoid double reporting as it would require the market participant to filter information about one transaction through different kinds of data reporting schemes. This would result in additional administrative work.

Question 14

Do you agree with the proposed approach concerning reporting channels?

Reporting is an obligation of market participants. Registered Reporting Mechanisms (RRMs) could be used to report trading information on behalf of market participants on a voluntary basis, provided the rights and obligations of RRMs and market participants are adequately provided for (e.g. missing or incorrect information, handling of commercially sensitive information, security mechanisms…). GIE is against any kind of a mandatory reporting channel.

Regarding security of data, GIE would like to highlight the importance of data security mechanisms on the side of the Agency. Such mechanisms to ensure confidentiality have to be developed, tested and certified in advance to any reporting.

Question 15

In your view, how much time would it take to implement the above-mentioned organisational requirements for reporting channels?

The Recommendations are not yet clear enough so as to allow an implementation timeline to be drawn. In particular, the contents of Annex II need to be refined.

Establishing a high-quality system for reliable reporting should have a higher priority than a faster implementation.

Question 16

Do you agree with this approach of reporting inside and transparency information?

First of all we would like to draw ACER's attention aware of the fact that question 16 within Annex I differs from the one in the main document. We will answer the longer version from the main document:

Transparency information is already published on an aggregated basis on the websites of infrastructure operators according to Regulation 715/2009/EC so NRAs and ACER can find it there. An obligation for operators to forward this information to NRAs or ACER constitutes double reporting, which has to be avoided according to REMIT. As individual, non-anonymous data will be reported to ACER through the transaction records of Annex II, separate reporting of such individual, non-anonymous data would constitute double reporting, which must be avoided.

Inside information available to infrastructure operators concerning their assets and operations is already published on their websites according to Regulation 715/2009/EC so NRAs and ACER can find all relevant information there. As a result, additional reporting under REMIT is unnecessary and would constitute double reporting, which must be avoided.

Question 17

Please indicate your views on the proposed way forward on the collection of regulated information.

Please refer to the answer given under question 16.

Question 18

Do you agree with the proposed approach for the reporting of regulated information? Please indicate your view on the proposed mandatory reporting of regulated information through RISs and transparency platforms. Should there remain at least one reporting channel for market participants to report directly to the Agency?

From the point of view of infrastructure operators, all information is already available on their websites as requested by Regulation 714/2009/EC and Regulation 715/2009/EC. Reporting obligations under REMIT are thus fulfilled and any kind of a reporting platform may only be voluntary.

Question 19

The recommendation does not foresee any threshold for the reporting of regulated information. Please indicate whether, and if so why, you consider a reporting threshold for regulated information necessary.

Regarding transaction-related information (Annex II), a threshold seems useful to avoid unnecessary administrative burden, especially for small market participants. For the definition of such a threshold, please refer to the answers to Questions 7 and 8.

Question 20

What is your view on the proposed timing and form of reporting?

Please refer to the answer to Question 18.